

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOANIE G.¹, an Individual,

Case No.: 5:18-01056 ADS

Plaintiff,

V.

ANDREW M. SAUL², Commissioner of
Social Security,

MEMORANDUM OPINION AND ORDER

Defendant.

I. INTRODUCTION

19 Plaintiff Joanie G. (“Plaintiff”) challenges Defendant Andrew M. Saul,
20 Commissioner of Social Security’s (hereinafter “Commissioner” or “Defendant”) denial

¹ Plaintiff's name has been partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

² On June 17, 2019, Saul became the Commissioner of the Social Security Administration. Thus, he is automatically substituted as the defendant under Federal Rule of Civil Procedure 25(d).

1 of her application for a period of disability and disability insurance benefits (“DIB”).
2 Plaintiff contends that the Administrative Law Judge (“ALJ”) failed to properly consider
3 relevant medical evidence and improperly rejected her substantive statements and
4 testimony of her symptoms and limitations in assessing her residual functional capacity.
5 For the reasons stated below, the decision of the Commissioner is affirmed, and this
6 matter is dismissed with prejudice.

7 **II. FACTS RELEVANT TO THE APPEAL**

8 Plaintiff last worked in February 2014 in the capacity of what she described as a
9 counselor at a youth homeless shelter, and prior to that as an administrative assistant.
10 (Administrative Record “AR” 38, 42-43). When Plaintiff filed her claim for social
11 security benefits, she alleged disability due to degenerative joint disease in her hip and
12 lumbar spine. (AR 64).

13 In response to the ALJ asking her what the primary reason is she can no longer
14 work, Plaintiff responded: “[t]he medication I’m on keeps me drowsy. I’m in pain 24
15 hours a day and my hand and hip and legs hurt 24 hours a day, so it’s hard for me to sit,
16 move, or any of that. Write, because I was used to typing all day and writing all day.
17 But my hand swells up and my legs and stuff.” (AR 46).

18 In finding Plaintiff not disabled under the Social Security Act, the ALJ found that
19 Plaintiff was capable of performing light work with significant limitations. (AR 23). The
20 only medical opinions in evidence assessed Plaintiff capable of performing medium
21 work and the ALJ gave those opinions little weight. (AR 22-23). None of Plaintiff’s
22 treating physicians provided a medical opinion regarding the Plaintiff’s functional
23 limitations and there is no medical source opinion in evidence supporting greater
24 limitations than those assessed by the ALJ. (AR 23).

1 **III. PROCEEDINGS BELOW**2 **A. Procedural History**

3 Plaintiff protectively filed her application for DIB on March 4, 2014, alleging
 4 disability beginning February 5, 2014. (AR 156-61). Plaintiff's claims were denied
 5 initially on July 25, 2014 (AR 86-89), and upon reconsideration on April 21, 2015 (AR
 6 94-98). A hearing was held before ALJ Robert Lenzini on April 10, 2017. (AR 30-63).
 7 Plaintiff, represented by counsel, appeared and testified at the hearing, as well as
 8 vocational consultant Aida Y. Worthington. Id.

9 On May 23, 2017, the ALJ found that Plaintiff was "not disabled" within the
 10 meaning of the Social Security Act.³ (AR 12-29). The ALJ's decision became the
 11 Commissioner's final decision when the Appeals Council denied Plaintiff's request for
 12 review on March 20, 2018. (AR 1-6). Plaintiff then filed this action in District Court on
 13 May 16, 2018, challenging the ALJ's decision. [Docket ("Dkt.") No. 1].

14 On November 6, 2018, Defendant filed an Answer, as well as a copy of the
 15 Certified Administrative Record. [Dkt. Nos. 20, 21]. Plaintiff filed a Memorandum in
 16 Support of Complaint on April 16, 2019. [Dkt. No. 32]. Defendant filed a Memorandum
 17 in Support of Answer on May 21, 2019. [Dkt. No. 33]. On June 6, 2019, Plaintiff filed a
 18 Statement of No Reply. [Dkt. No. 34]. The case is ready for decision.⁴

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 20
 21 ³ Persons are "disabled" for purposes of receiving Social Security benefits if they are
 22 unable to engage in any substantial gainful activity owing to a physical or mental
 23 impairment expected to result in death, or which has lasted or is expected to last for a
 24 continuous period of at least 12 months. 42 U.S.C. §423(d)(1)(A).

⁴ The parties filed consents to proceed before the undersigned United States Magistrate
 Judge, pursuant to 28 U.S.C. § 636(c), including for entry of final Judgment. [Dkt. Nos.
 13, 16].

1 **B. Summary of ALJ Decision After Hearing**

2 In the decision (AR 15-25), the ALJ followed the required five-step sequential
 3 evaluation process to assess whether Plaintiff was disabled under the Social Security
 4 Act.⁵ 20 C.F.R. § 404.1520(a)(4). At **step one**, the ALJ found that Plaintiff had not
 5 been engaged in substantial gainful activity since February 5, 2014, the alleged onset
 6 date, through her date last insured of September 30, 2016. (AR 17). At **step two**, the
 7 ALJ found that Plaintiff had the following severe impairments: (a) degenerative disc
 8 disease and facet arthropathy of the lumbar spine; and (b) osteoarthritis of the right hip.
 9 (AR 17). At **step three**, the ALJ found that Plaintiff “did not have an impairment or
 10 combination of impairments that met or medically equaled the severity of one of the
 11 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d),
 12 404.1525 and 404.1526).” (AR 19).

13 The ALJ then found that Plaintiff had the Residual Functional Capacity (“RFC”)⁶
 14 to perform light work as defined in 20 C.F.R. § 404.1567(b),⁷ except:

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 16 ⁵ The ALJ follows a five-step sequential evaluation process to assess whether a claimant
 17 is disabled: Step one: Is the claimant engaging in substantial gainful activity? If so, the
 18 claimant is found not disabled. If not, proceed to step two. Step two: Does the claimant
 19 have a “severe” impairment? If so, proceed to step three. If not, then a finding of not
 20 disabled is appropriate. Step three: Does the claimant’s impairment or combination of
 21 impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1?
 22 If so, the claimant is automatically determined disabled. If not, proceed to step four.
 23 Step four: Is the claimant capable of performing his past work? If so, the claimant is not
 24 disabled. If not, proceed to step five. Step five: Does the claimant have the residual
 functional capacity to perform any other work? If so, the claimant is not disabled. If
 not, the claimant is disabled. Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995)
 (citing 20 C.F.R. §404.1520).

6 An RFC is what a claimant can still do despite existing exertional and nonexertional
 limitations. See 20 C.F.R. § 404.1545(a)(1).

7 “Light work” is defined as

lifting no more than 20 pounds at a time with frequent lifting or carrying
 of objects weighing up to 10 pounds. Even though the weight lifted may be
 very little, a job is in this category when it requires a good deal of walking

1 she can lift and/or carry, push and pull 20 pounds occasionally and 10
2 pounds frequently; sit for four hours in an eight-hour workday, for up to
3 one hour at a time; and stand and/or walk for four hours in an eight-hour
4 workday, for up to one hour at a time. She can occasionally climb ramps
5 and stairs, but not climb ladders, ropes, or scaffolds; frequently balance;
6 occasionally stoop, crouch and crawl; and frequently handle and finger
7 with her dominant right hand. She cannot work at unprotected heights
8 or around moving mechanical parts.

9 (AR 20).

10 At **step four**, based on Plaintiff's residual functional capacity and the vocational
11 expert's testimony, the ALJ found that Plaintiff was able to perform her past relevant
12 work as an administrative assistant and a case aide. (AR 24). Accordingly, the ALJ did
13 not proceed to step five and found that Plaintiff was "not disabled", as defined in the
14 Social Security Act, at any time from February 5, 2014 through September 30, 2016, the
15 date last insured. (AR 24).

16 **IV. ANALYSIS**

17 **A. Issues on Appeal**

18 Plaintiff's raises two issue for review: (1) that the ALJ failed to properly evaluate
19 the medical evidence in assessing her RFC; and (2) that the ALJ failed to evaluate
20 Plaintiff's subjective statements regarding her symptoms in assessing her RFC. [Dkt.
21 No. 32, Plaintiff's Memorandum in Support of Complaint, 3 and 5].

22 or standing, or when it involves sitting most of the time with some pushing
23 and pulling of arm or leg controls. To be considered capable of performing
24 a full or wide range of light work, you must have the ability to do
25 substantially all of these activities.

26 20 C.F.R. § 404.1567(b); see also Rendon G. v. Berryhill, 2019 WL 2006688, at *3 n.6
27 (C.D. Cal. May 7, 2019).

1 **B. Standard of Review**

2 A United States District Court may review the Commissioner's decision to deny
 3 benefits pursuant to 42 U.S.C. § 405(g). The District Court is not a trier of the facts but
 4 is confined to ascertaining by the record before it if the Commissioner's decision is
 5 based upon substantial evidence. Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)
 6 (District Court's review is limited to only grounds relied upon by ALJ) (citing Connett v.
 7 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)). A court must affirm an ALJ's findings of
 8 fact if they are supported by substantial evidence and if the proper legal standards were
 9 applied. Mayes v. Massanari, 276 F.3d 453, 458-59 (9th Cir. 2001). An ALJ can satisfy
 10 the substantial evidence requirement "by setting out a detailed and thorough summary
 11 of the facts and conflicting clinical evidence, stating his interpretation thereof, and
 12 making findings." Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998) (citation
 13 omitted).

14 "[T]he Commissioner's decision cannot be affirmed simply by isolating a specific
 15 quantum of supporting evidence. Rather, a court must consider the record as a whole,
 16 weighing both evidence that supports and evidence that detracts from the Secretary's
 17 conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citations and
 18 internal quotation marks omitted). "Where evidence is susceptible to more than one
 19 rational interpretation,' the ALJ's decision should be upheld." Ryan v. Comm'r of Soc.
 20 Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (citing Burch v. Barnhart, 400 F.3d 676, 679
 21 (9th Cir. 2005)); see Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) ("If
 22 the evidence can support either affirming or reversing the ALJ's conclusion, we may not
 23 substitute our judgment for that of the ALJ."). However, the Court may review only "the
 24 reasons provided by the ALJ in the disability determination and may not affirm the ALJ

1 on a ground upon which he did not rely.” Orn v. Astrue, 495 F.3d 625, 630 (9th Cir.
2 2007) (citation omitted).

3 Error in a social security determination is subject to harmless error analysis.
4 Ludwig v. Astrue, 681 F.3d 1047, 1054 (9th Cir. 2012). Error is harmless if “it is
5 inconsequential to the ultimate nondisability determination” or, despite the legal error,
6 “the agency’s path may reasonably be discerned.” Treichler v. Comm’r of Soc. Sec.
7 Admin., 775 F.3d 1090, 1099 (9th Cir. 2014).

8 **C. The ALJ Properly Evaluated the Medical Evidence**

9 Plaintiff contends that the ALJ failed to properly consider relevant medical
10 evidence of record in assessing her RFC. Defendant argues that the ALJ properly
11 considered and weighed all relevant medical evidence of record in assessing Plaintiff’s
12 RFC.

13 1. Standard for Weighing Medical Opinions

14 The ALJ must consider all medical opinion evidence. 20 C.F.R. § 404.1527(b).
15 “As a general rule, more weight should be given to the opinion of a treating source than
16 to the opinion of doctors who do not treat the claimant.” Lester v. Chater, 81 F.3d 821,
17 830 (9th Cir. 1995) (citing Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987)). Where
18 the treating doctor’s opinion is not contradicted by another doctor, it may only be
19 rejected for “clear and convincing” reasons. Id. (citing Bayliss v. Barnhart, 427 F.3d
20 1211, 1216 (9th Cir. 2005)). “If a treating or examining doctor’s opinion is contradicted
21 by another doctor’s opinion, an ALJ may only reject it by providing specific and
22 legitimate reasons that are supported by substantial evidence.” Trevizo v. Berryhill, 871
23 F.3d 664, 675 (9th Cir. 2017) (quoting Bayliss, 427 F.3d at 1216).

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1 “Substantial evidence” means more than a mere scintilla, but less than a
2 preponderance; it is such relevant evidence as a reasonable person might accept as
3 adequate to support a conclusion.” Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir.
4 2007) (citing Robbins, 466 F.3d at 882). “The ALJ can meet this burden by setting out a
5 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
6 interpretation thereof, and making findings.” Magallanes v. Bowen, 881 F.2d 747, 751
7 (9th Cir. 1989) (citation omitted); see also Tommasetti v. Astrue, 533 F.3d 1035, 1041
8 (9th Cir. 2008) (finding ALJ had properly disregarded a treating physician’s opinion by
9 setting forth specific and legitimate reasons for rejecting the physician’s opinion that
10 were supported by the entire record).

11 As noted above, an RFC is what a claimant can still do despite existing exertional
12 and nonexertional limitations. See 20 C.F.R. §§ 404.1545(a)(1). Only the ALJ is
13 responsible for assessing a claimant’s RFC. See 20 C.F.R. § 404.1546(c). “It is clear that
14 it is the responsibility of the ALJ, not the claimant’s physician, to determine residual
15 functional capacity.” Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001) (citing 20
16 C.F.R. § 404.1545).

17 2. All Medical Evidence of Record Was Properly Considered

18 As set forth above, the ALJ assessed Plaintiff capable of performing light work
19 with significant limitations. (AR 23). None of the Plaintiff’s treating physicians
20 provided a medical opinion regarding the Plaintiff’s functional limitations (AR 23) and
21 Plaintiff does not point to any such opinion here. Furthermore, the only medical
22 opinions in evidence assessed Plaintiff capable of performing medium work. (AR 22-
23). The ALJ gave these opinions “little weight” as the physicians had not considered
24 evidence added to the record after the opinions were rendered, including more recent

1 diagnostic studies and treatment notes showing steroid injections and positive
 2 examination findings and that one of the opinions did not sufficiently consider
 3 Plaintiff's hip issues. (AR 23).

4 Plaintiff contends there is no medical evidence supportive of or consistent with
 5 the ALJ's RFC assessment. Plaintiff points to certain medical records such as x-rays,
 6 MRI findings and steroid injections and claims these records evidence greater limitation
 7 than that assessed by the ALJ.⁸ [Dkt. No. 32, pp. 4-5]. Plaintiff also points to medical
 8 records containing references to pain, reduced sleep, medications, as well as
 9 depression⁹, and contends the ALJ failed to properly consider the impact of these
 10 ailments in the RFC.

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 12 ⁸ As Defendant correctly notes, the diagnosis of a condition alone does not establish
 13 disability. See Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990). Rather, Plaintiff
 14 must show that her impairment causes disabling functional limitations. See 42 U.S.C. §
 15 423(d) (to be disabling, a medically determinable impairment must preclude substantial
 16 gainful activity).

17 ⁹ Plaintiff contends the ALJ's summary disregard of her depression, without any
 18 development whatsoever, constitutes reversible error. [Dkt. 32, p. 4]. The ALJ,
 19 however, did devote an entire lengthy paragraph in his decision to Plaintiff's claim of
 20 depression. (AR 19). The ALJ found there was a lack of objective evidence to
 21 substantiate the existence of a medically determinable mental impairment. To begin,
 22 the ALJ noted that "there is no objective medical evidence that documents a mental
 23 health diagnosis resulted from anatomical, physiological, or psychological abnormalities
 24 that are demonstrable by medically acceptable clinical or laboratory diagnostic
 techniques." [Id.]. The ALJ also noted that an impairment cannot be established on
 symptoms alone (20 C.F.R. 404.1508; SSR 96-4) and there must be evidence from an
 acceptable medical source to establish the existence of an impairment (20 CFR
 404.1527(f)). The ALJ noted that he had reviewed the entire record and found no
 objective evidence to support a finding of depression to be a medically determinable
 impairment. There is no mention of depression in the medical evidence until October 6,
 2015 and it was based only on Plaintiff's subjective complaints. Further, the two office
 visits with Plaintiff's primary care physician when Plaintiff's complaints of depression
 were noted both documented Plaintiff's mental status to be normal. [Id., citing AR 342,
 375].

25 Moreover, Plaintiff has not explained how any of her purported mental
 26 limitations are sufficiently restrictive to ultimately preclude her from performing
 27 work. See, e.g., Hoopai v. Astrue, 499 F.3d 1071, 1077 (9th Cir. 2007) (explaining the

1 The ALJ did a thorough review of the entirety of Plaintiff's medical records,
 2 including those referenced by Plaintiff. (AR 17-19). The ALJ thoroughly analyzed the
 3 only medical opinions and functional assessments in evidence, those of Vincente
 4 Bernabe, D.O. and the two State agency medical consultants (AR 22-23), and found
 5 them to be of little weight as they all found Plaintiff capable of performing medium
 6 work. The ALJ's review of Plaintiff's medical record found greater limitations and thus
 7 he assessed Plaintiff capable of performing light work with additional restrictions to
 8 accommodate her medical conditions. As noted, none of Plaintiff's treating physicians
 9 provided any functional assessments of her limitations and Plaintiff points to no
 10 medical opinions or assessments that the ALJ disregarded.

11 The Court therefore finds the ALJ properly assessed the medical evidence of
 12 record. Plaintiff would simply prefer the ALJ to have a different interpretation of the
 13 medical evidence than that assessed. However, it is the role of the ALJ to resolve any
 14 conflicts or ambiguities in the medical record. See Tommasetti, 533 F.3d at 1041-42
 15 ("The ALJ is the final arbiter with respect to resolving ambiguities in the medical
 16 evidence."): Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (holding that it is the
 17 ALJ's job to resolve any conflicts). See Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198
 18 (9th Cir. 2008) ("Where evidence is susceptible to more than one rational

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 20 Ninth Circuit has not "held mild or moderate depression to be a sufficiently severe non-
 21 exertional limitation that significantly limits a claimant's ability to do work beyond the
 22 exertional limitation"); Ball v. Colvin, 2015 WL 2345652, at *3 (C.D. Cal. May 15, 2015)
 23 ("As the ALJ found that Plaintiff's mental impairments were minimal, the ALJ was not
 24 required to include them in Plaintiff's RFC."); Sisco v. Colvin, 2014 WL 2859187, at *7-8
 (N.D. Cal. June 20, 2014) (ALJ not required to include in RFC assessment mental
 impairment that imposed "no significant functional limitations").

Accordingly, the Court finds no error in the ALJ's assessment of Plaintiff's claim
 of mental impairment.

1 interpretation,’ the ALJ’s decision should be upheld.”) (citation omitted); Robbins v.
 2 Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) (“If the evidence can support either
 3 affirming or reversing the ALJ’s conclusion, we may not substitute our judgment for that
 4 of the ALJ.”). Indeed, an ALJ is not obligated to discuss “every piece of evidence” when
 5 interpreting the evidence and developing the record. See Howard ex rel. Wolff v.
 6 Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) (citation omitted). Similarly, an ALJ is
 7 also not obligated to discuss every word of a doctor’s opinion or include limitations not
 8 actually assessed by the doctor. See Fox v. Berryhill, 2017 WL 3197215, *5 (C.D. Cal. July
 9 27, 2017); Howard, 341 F.3d at 1012. The Court finds no error by the ALJ in considering
 10 the medical record in assessing Plaintiff’s RFC.

11 **D. The ALJ Properly Evaluated Plaintiff’s Subjective Complaints**

12 Plaintiff asserts that the ALJ did not properly evaluate her subjective statements
 13 and testimony regarding her symptoms and limitations in assessing her RFC.
 14 Defendant, on the other hand, contends the ALJ properly evaluated Plaintiff’s subjective
 15 statements, finding them inconsistent with the record.

16 1. Legal Standard for Evaluating Claimant’s Testimony

17 A claimant carries the burden of producing objective medical evidence of his or
 18 her impairments and showing that the impairments could reasonably be expected to
 19 produce some degree of the alleged symptoms. Benton ex rel. Benton v. Barnhart, 331
 20 F.3d 1030, 1040 (9th Cir. 2003). Once the claimant meets that burden, medical
 21 findings are not required to support the alleged severity of pain. Bunnell v. Sullivan,
 22 947 F.2d 341, 345 (9th Cir. 1991) (en banc); see also Light v. Soc. Sec. Admin., 119 F.3d
 23 789, 792 (9th Cir. 1997) (“claimant need not present clinical or diagnostic evidence to
 24 support the severity of his pain”) (citation omitted)). Except for depression, Defendant

1 does not contest and thus appears to concede that Plaintiff carried her burden of
2 producing objective medical evidence of her impairments and showing that the
3 impairments could reasonably be expected to produce some degree of the alleged
4 symptoms.

5 Once a claimant has met the burden of producing objective medical evidence, an
6 ALJ can reject the claimant's subjective complaint "only upon (1) finding evidence of
7 malingering, or (2) expressing clear and convincing reasons for doing so." Benton, 331
8 F.3d at 1040. To discredit a claimant's symptom testimony when the claimant has
9 provided objective medical evidence of the impairments which might reasonably
10 produce the symptoms or pain alleged and there is no evidence of malingering, the ALJ
11 "may reject the claimant's testimony about the severity of those symptoms only by
12 providing specific, clear and convincing reasons for doing so." Brown-Hunter v.
13 Colvin, 806 F.3d 487, 489 (9th Cir. 2015) ("we require the ALJ to specify which
14 testimony she finds not credible, and then provide clear and convincing reasons,
15 supported by evidence in the record, to support that credibility determination");
16 Laborin v. Berryhill, 867 F.3d 1151, 1155 (9th Cir. 2017).

17 The ALJ may consider at least the following factors when weighing the claimant's
18 credibility: (1) his or her reputation for truthfulness; (2) inconsistencies either in the
19 claimant's testimony or between the claimant's testimony and his or her conduct; (3) his
20 or her daily activities; (4) his or her work record; and (5) testimony from physicians and
21 third parties concerning the nature, severity, and effect of the symptoms of which she
22 complains. Thomas v. Barnhart, 278 F.3d 15 947, 958-59 (9th Cir. 2002) (citing Light,
23 119 F.3d at 792). "If the ALJ's credibility finding is supported by substantial evidence in
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1 the record, [the court] may not engage in second-guessing.” Id. at 959 (citing Morgan v.
2 Apfel, 169 F.3d 595, 600 (9th Cir. 1999)).

3 2. The ALJ Provided Clear and Convincing Reasons Supported by
4 Substantial Evidence

5 Having carefully reviewed the record, the Court finds that the ALJ provided
6 specific, clear and convincing reasons for discounting Plaintiff’s subjective complaints.
7 The ALJ found that Plaintiff’s subjective complaints were not entirely consistent with
8 the objective medical record and with statements made by Plaintiff in the record,
9 including of her daily activities. The ALJ did, however, carefully review and assess
10 Plaintiff’s subjective complaints in finding Plaintiff capable of performing only light
11 work with significant additional restrictions.

12 The ALJ performed a thorough review and analysis of Plaintiff’s entire medical
13 record and found Plaintiff’s testimony inconsistent with the medical records. (AR 21-
14 22). The ALJ found Plaintiff’s medical history, including references to specific medical
15 visits and test results, was not consistent with the alleged severity of her symptoms.
16 Thus, the ALJ provided specific, clear and convincing reasons why Plaintiff’s subjective
17 complaints are not supported by the objective medical records. “Although lack of
18 medical evidence cannot form the sole basis for discounting pain testimony, it is a factor
19 that the ALJ can consider in his credibility analysis.” Burch, 400 F.3d at 681. Thus, the
20 ALJ did not err in considering the sufficiency, or lack thereof, of the objective evidence
21 while weighing Plaintiff’s testimony regarding her symptoms and limitations.

22 The ALJ also noted inconsistencies between Plaintiff’s testimony and the
23 statements she made in her medical records. For instance, the ALJ pointed out that
24 Plaintiff testified that she always used her walker to ambulate; “however, on August 6,

1 2015 she told her primary care physician that she can tolerate movements without her
 2 walker, but she prefers to use the walker when going long distances.” (AR 21, citing AR
 3 356). The ALJ also pointed out where statements made in her medical records as to her
 4 daily activities did not align with the severely limited amount of daily activity she
 5 testified to at the hearing and in her disability report. “The claimant also testified that
 6 her daily activities consisted primarily of laying down and reading, and that she needed
 7 help around the house and with taking a shower and washing her hair. But in
 8 November 2015, the claimant reported to her primary care physician that she was the
 9 primary caregiver for her mother who had a stroke.” (AR 21, citing AR 347). It was
 10 proper for the ALJ to consider Plaintiff’s reported daily activities of caring for her
 11 mother when assessing the credibility of her testimony of alleged symptoms and
 12 limitations.¹⁰ Daily activities may be considered to show that Plaintiff exaggerated her
 13 symptoms. See Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d 685, 693 (9th Cir.
 14 2009) (ALJ properly recognized that daily activities “did not suggest [claimant] could
 15 return to his old job” but “did suggest that [claimant’s] later claims about the severity of
 16 his limitations were exaggerated.”).

17 Based on the clear, convincing and specific reasons for partially rejecting
 18 Plaintiff’s subjective complaints and the substantial evidence to support the ALJ’s
 19 determination, the Court concludes that the ALJ did not commit error by not including
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21 ¹⁰ An ALJ is permitted to consider daily living activities in his credibility analysis. See
 22 20 C.F.R. § 404.1529(c)(3) (daily activities are a relevant factor which will be considered
 23 in evaluating symptoms); see also Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219,
 24 1227 (9th Cir. 2009) (“In reaching a credibility determination, an ALJ may weigh
 inconsistencies between the claimant’s testimony and his or her conduct, daily activities,
 and work record, among other factors”).

1 additional restrictions beyond those already included in the RFC due to Plaintiff's
2 asserted symptoms and limitations.

3 **V. CONCLUSION**

4 For the reasons stated above, the decision of the Social Security Commissioner is
5 AFFIRMED, and the action is DISMISSED with prejudice. Judgment shall be entered
6 accordingly.

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8 DATE: April 21, 2020

9 /s/ Autumn D. Spaeth
10 THE HONORABLE AUTUMN D. SPAETH
11 United States Magistrate Judge
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